

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 5/30/14

JAMES H. FISCHER,

Plaintiff,

-v-

STEPHEN T. FORREST,

Defendant.

14 Civ. 1304 (PAE)

ORDER

X

PAUL A. ENGELMAYER, District Judge:

On May 27, 2014, plaintiff, who is proceeding *pro se*, submitted a document styled “Plaintiff’s Request that the Court Take Judicial Notice of Evidence,” in which he expressed his concern that, during the pendency of this action, the defendant may remove from his website certain webpages which plaintiff believes constitute evidence of defendant’s allegedly willful infringement of plaintiff’s copyrights. Dkt. 24. Plaintiff states that he has included these websites as exhibits to his Amended Complaint. *Id.*; *see also* Dkt. 23. Plaintiff requests that the Court take judicial notice, under Federal Rule of Evidence 201, “of what remaining evidence has not yet been destroyed, and is relevant to the case at hand, before it might also be destroyed.” Dkt. 24.

There is presently no need for the Court to use the procedure of judicial notice. That is in part because it is not clear what precise fact the plaintiff seeks to have this Court take notice of, nor whether defendant disputes that fact. And, to the extent that plaintiff seeks to have this Court take notice that certain webpage are included in defendant’s website, then, insofar as plaintiff has included the websites at issue as exhibits in his Amended Complaint, the images of

those webpages have been preserved. In the unlikely event that a dispute arises as to the authenticity of those webpages, the Court has little concern about its ability to resolve such a dispute. Most importantly, the Court expects that defense counsel has advised his client to put in place a preservation order, in order to preserve all potentially relevant evidence. If defense counsel has not yet done so, the Court directs him to do so, immediately.

Finally, it appears that plaintiff brought this issue to the Court's attention without consulting with defense counsel as to the preservation issue. In the future, the parties are to attempt to amicably resolve all procedural issues with each other before seeking the Court's intervention.

The Court will mail this order to the *pro se* plaintiff.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: May 29, 2014
New York, New York